

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRUCE HALL,)	
)	
Plaintiff,)	4:04CV3275
)	
v.)	
)	
TRENDWAY PLUMBING,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

Defendant has now appeared through counsel and moves the court for an order allowing it to file an answer out of time. Plaintiff has opposed the motion, arguing that the defendant was properly served in August 2004 and is to blame for the case not moving forward, in effect waiving its right to defend.

The case was filed on August 18, 2004. Although the docket sheet shows that summons was issued on that date, it did not show any return of service, nor was there any sign of action in the case by February 17, 2005. The court, therefore, issued a show cause order on that date. In response to that order, plaintiff filed documents indicating that the defendant's registered agent was served by certified mail on August 21, 2004. Therefore the show cause order was lifted.

Plaintiff could have moved for default judgment against the defendant as early as September, 2004, but did not. Plaintiff took no action in the case until the court prodded him to show cause why it should not be dismissed for failure to timely serve the defendant and/or to prosecute the case. It is disingenuous for plaintiff now to complain that defendant is responsible for delaying the progression of this case.

IT THEREFORE HEREBY IS ORDERED, the defendant's motion for leave to file answer, filing 13 (misdocketed as a motion for leave to file an amended answer), is granted, and defendant may file an answer within ten days.

DATED this 3rd day of June, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge